

Before the  
Federal Communications Commission  
Washington, D.C. 20554

In the Matter of )  
 )  
Structure and Practices )  
of the Video Relay Service )  
Program )  
 )  
Reply Comments )  
\_\_\_\_\_ )

CG Docket No. 10-51

**REPLY COMMENTS OF CSDVRS, LLC**

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## **Executive Summary**

In these Reply Comments to the Notice of Inquiry issued by the Commission on June 28, 2010, CSDVRS specifically addresses two fundamental issues raised by other commentators: reverse auction/competitive bidding, and the tiered rate.

CSDVRS firmly opposes the implementation of any type of reverse auction or competitive bidding process as proposed in the NOI. Indeed, the majority of comments received likewise reject the viability of this proposal, with the one exception being the dominant provider. In these Reply Comments, CSDVRS submits that the dominant provider has supported a reverse auction mechanism only because it would allow it to maintain its dominance over the marketplace to the exclusion of competition.

CSDVRS next offers its ongoing support of the multi-tiered compensation methodology. Again, with the exception of the dominant provider, all of the other commentators likewise supported the continuance of the tiered rate. In these Reply Comments, CSDVRS submits that the dominant provider advocates for the elimination of the tiered rate for the same reason it would support a reverse auction system (*to wit*, the continued dominance of the industry).

CSDVRS urges the Commission to carefully consider the comments and reply comments filed to the record in response to the NOI when crafting its next Notice of Proposed Rulemaking. The future of VRS must remain viable and competitive in order to allow greater telecommunications access and functional equivalency for deaf and hard-of-hearing people.

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**REPLY COMMENTS OF CSDVRS, LLC**

CSDVRS, LLC (“CSDVRS”), by and through undersigned counsel, hereby submits its Reply Comments to the various Comments submitted to the record<sup>1</sup> concerning the Notice of Inquiry (“NOI”) issued by the Federal Communications Commission (“FCC” or “Commission”) on June 28, 2010.<sup>2</sup> CSDVRS praises the efforts and undertakings of all VRS providers, consumer groups, and individual consumers for contributing their thoughts and comments on the future of the video relay service (“VRS”) program. CSDVRS offers reply comments only on two matters raised in the NOI and commented upon in the various submissions to the record: reverse auctioning and the tiered rate. Specifically, CSDVRS reaffirms its staunch opposition to a

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<sup>1</sup> See, *In the Matter of Structure and Practices of the Video Relay Service Program*, Comments of Sorenson Communications, CG Docket 10-51 (August 18, 2010)(hereinafter “Sorenson Comments”); *In the Matter of Structure and Practices of the Video Relay Service Program*, Comments of Sprint Nextel, CG Docket 10-51 (August 18, 2010)(hereinafter “Sprint Comments”); *In the Matter of Structure and Practices of the Video Relay Service Program*, Purple Communications, Inc. Comments of Notice of Inquiry, CG Docket 10-51 (August 18, 2010)(hereinafter “Purple Comments”); *In the Matter of Structure and Practices of the Video Relay Service Program*, Comments of AT&T, Inc., CG Docket 10-51 (August 18, 2010)(hereinafter “AT&T Comments”); *In the Matter of Structure and Practices of the Video Relay Service Program*, Telecommunications for the Deaf and Hard of Hearing, Association of Late-Deafened Adults, Inc., National Association for the Deaf, Deaf and Hard of Hearing Consumer Advocacy Network, American Association of the Deaf-Blind, Comments in Response to Notice of Inquiry, CG Docket 10-51 (August 18, 2010)(hereinafter “Consumer Comments”).

<sup>2</sup> See, *In the Matter of Structure and Practices of the Video Relay Service Program*, Notice of Inquiry, CG Docket 10-51, FCC 10-111, (June 28, 2010)(hereinafter “NOI”).

reverse auction methodology as promoted by Sorenson Communications (“Sorenson”), and its ongoing support for the continuance of the tiered rate.

## **A. REVERSE AUCTIONS**

The NOI raised the question of whether the Commission could hold reverse auctions “...to designate a fixed number of eligible VRS providers for a set period of time.”<sup>3</sup> In its initial Comments, CSDVRS noted that a reverse auction would exact a horrific toll on VRS with poorer service, predatory pricing, stifling of innovation and provider collapse.<sup>4</sup> CSDVRS stands by its assertion and would direct the Commission’s attention to the fact that all of the certified VRS providers, except for Sorenson, as well as the consumer groups are patently opposed to a reverse auction system.

### **(1) Purple Comments**

Purple Communications, Inc. (“Purple”) noted that a competitive bidding or reverse auction system would “decrease or eliminate” competition between VRS providers without serving to reduce or limit costs.<sup>5</sup> As Purple correctly points out, in a reverse auction system, an incumbent [dominant] VRS provider with an absolute cost advantage (i.e. Sorenson) would win every auction by simply slightly undercutting its rivals.<sup>6</sup> Ultimately, this will make it impossible for other providers to compete as their costs are invariably higher and they will be forced out of

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<sup>3</sup> See, NOI at ¶68

<sup>4</sup> See, *In the Matter of Structure and Practices of the Video Relay Service Program*, Comments of CSDVRS, LLC, CG Docket 10-51 (August 18, 2010)(hereinafter “CSDVRS Comments”).

<sup>5</sup> See, Purple Comments at p. 16

<sup>6</sup> *Id.* at pp. 16-17

the marketplace. Also, as Purple also correctly notes, an auction system set in place to entrench a handful of providers will only serve to drive the costs of VRS upwards as each provider would be incented to raise their bids in subsequent auction processes.<sup>7</sup> CSDVRS agrees entirely with Purple's assertions on these matters and would further restate that an auction scheme would act as an absolute disincentive to the chosen providers to innovate and develop new technologies and services for the deaf and hard of hearing community, as mandated by law<sup>8</sup>, and would eventually drive all other VRS providers out of business in favor of the dominant provider.

## **(2) AT&T Comments**

AT&T, Inc. ("AT&T") similarly notes in its Comments that a bidding or auction system would harm competition and accessibility to VRS.<sup>9</sup> Indeed, AT&T notes that with over 80% of the VRS market share, the dominant provider (Sorenson), which is able to drive efficiencies and reduce costs in a manner not available to smaller providers, would systematically submit the most competitive bid.<sup>10</sup> This would ultimately inure to detriment of consumers, and undermine accessibility and choice of services. CSDVRS agrees entirely with AT&T in this regard.

## **(3) Consumer Groups Comments**

Of particular importance in the NOI proceedings are the comments of the organizations that represent the actual consumers of VRS, *to wit*, Telecommunications for the Deaf and Hard of Hearing, Association of Late-Deafened Adults, Inc., National Association for the Deaf, Deaf and Hard of Hearing Consumer Advocacy Network, American Association of the Deaf-Blind (collectively the "Consumer Groups"). CSDVRS submits that it is imperative that the

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<sup>7</sup> *Id.* at p. 17

<sup>8</sup> *See*, 47 U.S.C. §225(d)(2)

<sup>9</sup> *See*, AT&T Comments at p. 17

<sup>10</sup> *Id.*

Commission pay particular heed to the Consumer Groups insofar as any fundamental change to the VRS program, such as would be occasioned by a reverse auction or competitive bidding process, would directly affect those persons whom the Consumer Groups represent. On this particular matter, the Consumer Groups echo the sentiments of the majority of the certified providers: a reverse auction system would result in a reduction of competition (which otherwise benefits consumers), loss of innovation, and ultimately drive the costs of VRS upward even though it might lower rates one time.<sup>11</sup> Accordingly, any competitive bidding or reverse auction scheme should be avoided in the interests of functional equivalency.

#### **(4) Sprint Comments**

CSDVRS would note that a seemingly peculiar commentary was submitted to the record by Sprint Nextel (“Sprint”) concerning competitive bidding and/or a reverse auction system. In its comments, Sprint appears to propose that a competitive bid or auction should be strongly considered by the Commission.<sup>12</sup> While Sprint appears to have been a “lone wolf” in its support of such a system aside from Sorenson (whose very obvious motives are discussed herein below), CSDVRS believes that Sprint has suggested such a program as a contributor to the Interstate TRS Fund (the “Fund”), and *not* as a VRS provider. Indeed, Sprint indicates that although rates for TTY-based TRS, STS, Captel, etc. are set through competitive bidding, such a process for VRS may not be feasible as it would curtail consumer choice.<sup>13</sup> Furthermore, Sprint specifically advocates in favor of maintaining the tiered compensation structure, and, as such, a reverse auction or competitive bidding plan would be plainly contrarian.<sup>14</sup> Accordingly, the Commission should be clear that Sprint does

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<sup>11</sup> See, Consumer Comments at pp. 28-29.

<sup>12</sup> See, Sprint Comments at Section II(B)(3)

<sup>13</sup> See, Sprint Comments at FN4

<sup>14</sup> *Id.*, at p. 6

not appear to be advocating for a VRS auctioning/bidding program, and that if implemented, Sprint asserts that it would undermine competition in the marketplace. CSDVRS agrees with this position.

#### **(5) Sorenson Comments**

Finally, CSDVRS would like to specifically respond to the position of Sorenson and its advocacy in favor of a competitive bidding or reverse auction system.<sup>15</sup> Sorenson asserts that the Commission should implement a bidding scheme and pare the reimbursement rate down to reflect the costs of the “second most efficient [VRS] firm.”<sup>16</sup> Based on the cost data submitted to the Commission by the Fund Administrator, the second most efficient firm (assuming efficiency equates to the costs of service) provides VRS for approximately \$5.62 per minute with an overall industry average, excluding Sorenson, of approximately \$6.40 per minute.<sup>17</sup> Meanwhile, Sorenson historically provided VRS at a cost of \$3.19 per minute owing to its size and attendant economies of scale.<sup>18</sup> This amount does not account for servicing of Sorenson’s enormous self-incurred debt which, if included in the per-minute costs, would bring its costs to approximately \$5.00 per minute. CSDVRS submits that a reduction of the overall rate, as proffered by Sorenson, to that of the “second most efficient provider” (\$5.65 per minute) would not only serve to drive other providers out of business, but also grant Sorenson a substantial profit over its actual operating costs. In either event, a competitive bidding or reverse auction process, as presented, would simply allow further overcompensation to Sorenson (which CSDVRS would characterize as an overt plundering of the Fund to the exclusion of other providers and the detriment of deaf and hard-of-hearing people).

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<sup>15</sup> See, Sorenson Comments at pp. 23-24

<sup>16</sup> *Id.* at p. 24

<sup>17</sup> See, *TRS Fund Administration*, Presentation at NASRA Meeting, Lowell, MA, Sept. 18, 2008.

<sup>18</sup> *Id.*



Smaller VRS providers who could not provide services at the “second most efficient rate” would be forced to close their doors, and eventually the actual second most efficient provider itself would be forced out of the industry as it would be unable to make a profit while Sorenson maintained double-digit earnings year after year.

Sorenson suggests that it is imperative that any auction or bidding process include several “winners” and that in no event should any winners be guaranteed a specified share of the market.<sup>19</sup> CSDVRS submits, as it has in the past, that the *only* way an auction or bidding process could be successful is if there were a guaranteed allotment of market share to the winning bidders.<sup>20</sup> Indeed, to allow an open market in an auction or bidding scenario (i.e. no guarantee of market share) will only further entrench Sorenson as the dominant (and eventually sole) VRS provider. Furthermore, an open market reverse auction would place the Commission in an almost subservient role to Sorenson as well as in the unenviable position of being placed in the middle of an inevitable anti-trust action against Sorenson brought by other providers, consumers, and/or State or Federal Regulators. CSDVRS therefore submits that Sorenson’s advocacy for “multiple winners” in a bidding or auction scenario is simply a thinly-veiled attempt by the company to mask its recurrent monopolistic aspirations insofar as it is certainly aware that the system it proposes will absolutely undermine competition in the VRS market. CSDVRS also finds it apropos that Sorenson professes that winning bidders with a guaranteed market share would simply not have an incentive to provide adequate service, but would instead provide lower quality service to its customers, thereby increasing their earnings.<sup>21</sup> While CSDVRS agrees that providers must have incentives to grow and innovate, CSDVRS does not share in Sorenson’s ostensible paradigm that corporate profit supersedes the best

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<sup>19</sup> *Id.* at 23

<sup>20</sup> *See*, CSDVRS Letter to Joel Gurin, June 7, 2010.

<sup>21</sup> *See*, Sorenson Comments at p. 23

interest of deaf and hard-of-hearing people and that other providers would undermine the quality of their VRS offerings for the sake of higher company earnings.

CSDVRS need not remind the Commission that seeming attempts to corner the VRS marketplace is an ongoing issue with Sorenson Communications. Indeed, Sorenson's comment on a reverse auction appears to be yet another link in a long and continuous chain of self-interest and self-aggrandizement aimed at building and maintaining a complete monopoly of the VRS industry. CSDVRS believes that Sorenson too often places profiteering above principle with little or no interest in protecting the rights and best interests of deaf and hard-of-hearing people. CSDVRS maintains that the Commission must distance itself from any such undertakings, less it itself be embroiled in the brewing controversies surrounding a[nother] near-monopoly occurring in the telecommunications industry and the attendant exploitation of the Interstate TRS Fund. If the Commission truly endeavors to avoid overpayment of providers, as raised in the NOI,<sup>22</sup> then it must at all costs not implement a bidding or auction process which will only serve to further overcompensate the dominant provider, destroy competition and innovation in the industry, and wholly eliminate consumer choice.

## **B. MULTI-YEAR TIERED RATE STRUCTURE**

CSDVRS has long advocated for the continuance of the multi-year tiered rate structure since the institution of the last rate proceeding.<sup>23</sup> CSDVRS stands by its conviction that the tiered rate

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<sup>22</sup> See, NOI at ¶¶22-23.

<sup>23</sup> See, CSDVRS Ex Parte, CG Docket 10-51 (April 29, 2010); *In the Matter of Structure and Practices of the Video Relay Service Program*, Comments of CSDVRS to Proposed Compensation Rates, CG Docket 10-51 (May 10, 2010); CSDVRS Ex Parte, CG Docket 10-51 (May 17, 2010); CSDVRS Letter to Joel Gurin (May 20, 2010); *In the Matter of Structure and Practices of the Video Relay Service Program*, CSDVRS Reply Comments to Sorenson Communications, CG Docket 10-51 (May 21, 2010); CSDVRS Ex Parte, CG Docket 10-51 (May 27, 2010). See generally, CSDVRS Comments

structure as enacted by the Commission<sup>24</sup> has allowed VRS to grow and innovate and at the same time has allowed for healthy competition within the marketplace which has in turn lead to more consumer choice and greater functional equivalency. CSDVRS would urge the Commission to heed the position of CSDVRS to maintain the tiered rates, as has been echoed by all other providers with the exception of Sorenson.

### **(1) Sprint Comments**

Sprint noted in its comments that the Commission adopted a three-tiered pricing regime to account for economies of scale and to allocate rates that approximated provider costs.<sup>25</sup> CSDVRS would add that the economies of scale have not dissipated since the rate structure was first set, and, in fact have grown considerably in the past three years. Indeed, as Sprint correctly attributes, each provider is at a different point on the average cost curve,<sup>26</sup> and this had been forthrightly confirmed in the annual filings to the Fund Administrator. Sprint further contends that the Commission should not only maintain the tiered rate structure, but also reevaluate the per-minute volume ceilings of each tier to better accommodate the differences in costs and scale.<sup>27</sup> CSDVRS agrees entirely with Sprint in this regard, and submits that the Commission might also consider adding tiers as suggested by Purple and the Consumer Groups (discussed below).

### **(2) Purple Comments**

Following on the reply to the Sprint comments, CSDVRS notes that Purple similarly advocates not only for maintaining the tiered rate structure, but also for adding two additional tiers to

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<sup>24</sup> See, *In the Matter of Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Report and Order and Declaratory Ruling, 22 FCC Rcd 20140 (2007)(hereinafter “2007 Rate Order”).

<sup>25</sup> See, Sprint Comments at p. 7

<sup>26</sup> *Id.*

<sup>27</sup> *Id.* at p. 8

the rate plan for a three-year term.<sup>28</sup> Purple notes that a properly instituted tiered rate plan is essential less providers be discouraged from competition.<sup>29</sup> CSDVRS agrees with Purple and has itself presented these solutions to the Commission in the past as a means to provide adequate compensation to providers without over or under compensating either ends of the spectrum.<sup>30</sup> Purple finally notes that maintaining the tiered rate structure, with a price cap, optimizes opportunities for smaller firms to compete in the VRS market, fosters growth, and provides an incentive to providers to reduce costs without sacrificing quality.<sup>31</sup> CSDVRS agrees and would add that the suggested multi-tier, multi-year structure will also permit sustained innovation in the marketplace allowing deaf and hard-of-hearing persons greater options and choice in VRS services and equipment.

### **(3) AT&T Comments**

Reverberating the support of the multi-year tiered rate, AT&T notes that shifting to a single recovery rate would put significant constraints on smaller providers and further entrench the market share position of the dominant provider.<sup>32</sup> AT&T also notes that the tiered rate system has allowed smaller providers to establish support mechanisms (i.e. call centers, platforms, personnel) that allow them to become competitive in the market. AT&T makes a very pertinent note to the compensation scheme that CSDVRS submits is vital to the discussion on provider compensation, and that is that the “inclu[sion] of the dominant provider’s cost data in a weighted average calculation to determine a VRS compensation rate for all VRS providers would severely understate the compensation needed to reimburse smaller VRS providers for their real costs of providing service.”<sup>33</sup> This goes directly to the point referenced hereinabove that Sorenson’s historical costs for providing VRS is approximately

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<sup>28</sup> See, Purple Comments at pp. 8-9

<sup>29</sup> *Id.* at p. 9

<sup>30</sup> See, *In the Matter of Structure and Practices of the Video Relay Service Program*, Comments of CSDVRS to Proposed Compensation Rates, CG Docket 10-51 (May 10, 2010)(advocating broadening of the tiers); CSDVRS Ex Parte, CG Docket 10-51 (April 29, 2010)(advocating additional tiers).

<sup>31</sup> See, Purple Comments at p. 10

<sup>32</sup> See, AT&T Comments at p. 5

<sup>33</sup> *Id.*

\$3.19 per minute while the average historical costs of the remaining providers (excluding outliers) is \$6.40 per minute with no provider's costs being less than 76% above Sorenson's per minute average. Thus, CSDVRS submits that paring the VRS rate to a single level based on the weighted average of Sorenson's significantly lower costs will ultimately only serve to eliminate competition in the VRS marketplace and create a monopoly in the dominant provider.

#### **(4) Consumer Groups Comments**

The Consumer Groups also opine in their comments that the Commission must maintain its tiered-rate approach to VRS compensation.<sup>34</sup> Similar to Purple, the Consumer Groups also advocate in favor of adding tiers to the rate structure and adjusting the threshold number of minutes for each of the respective tiers.<sup>35</sup> The Consumer Groups note that the current three-tier rates enacted in June,<sup>36</sup> create an "artificial cliff" between the tiers and act as a disincentive for providers to grow into the highest tier where rates drop off considerably.<sup>37</sup> While CSDVRS does not subscribe to the cliff analogy in its entirety, it appreciates the Consumer Groups position and what is implied. CSDVRS would simply rebut that the Commission was correct in implementing the current "cliff" for an interim one-year period and to revisit compensation as part of the NOI. Moreover, CSDVRS submits that including additional tiers in the next rate proceeding would certainly alleviate this concern.

The Consumer Groups ultimately advocate for a revised multi-tier structure, with a modified price cap, to account for economies of scale existing in the marketplace and to incent greater efficiencies. CSDVRS agrees with the Consumer Groups (and Purple) that a tier adjustment in the

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<sup>34</sup> See, Consumer Comments at p. 5

<sup>35</sup> *Id.* at p. 6

<sup>36</sup> See, *In the Matter of Structure and Practices of the Video Relay Service Program*, Order, FCC 10-115 (June 28, 2010).

<sup>37</sup> See, Consumer Comments at p. 6

number of threshold minutes and/or the number of tiers, is necessary to achieve the Commission's goal of maintaining predictable, sustainable, and functionally equivalent VRS services.

#### **(5) Sorenson Comments**

Finally are the comments of Sorenson which, quite predictably, advocate for the elimination of tiers.<sup>38</sup> In its comments, Sorenson rehashes its same tired arguments, already denounced by the Commission,<sup>39</sup> that tiered rates promote inefficiency and treat providers differently. Sorenson has raised these comments before,<sup>40</sup> and CSDVRS has responded in kind.<sup>41</sup> Thus, rather than recite and retort to the numerous categorical fallacies in Sorenson's prior arguments, CSDVRS offers reply comments to matters not previously raised.

Sorenson first contends that economies of scale in VRS are exhausted at a low volume and that VRS providers have extremely small "sunk" costs, which Sorenson defines as legal costs to become an eligible provider and marketing costs to create brand awareness.<sup>42</sup> CSDVRS retorts that Sorenson has disregarded a plethora of other costs that a market entrant must endure such as technology platforms, interpreter labor, and operational costs such as facilities and administration. Thus, contrary to Sorenson's assertion, a potential new VRS provider could not become a market force simply by hiring a lawyer and a marketing department – many more costs are involved that affect the new/smaller provider's economy quite dramatically as it seeks to gain market share. CSDVRS submits that this comment by Sorenson is simply an attempt to chip away at the irrefutable fact that Sorenson operates at a significantly large economy of scale roughly double that of all others

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<sup>38</sup> See, Sorenson Comments at pp. 29-33

<sup>39</sup> See, *In the Matter of Structure and Practices of the Video Relay Service Program*, Order Denying Stay Motion, CG Docket 10-51, DA 10-1287 (July 9, 2010).

<sup>40</sup> See, *In the Matter of Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities/Structure and Practices of the Video Relay Service Program*, Comments of Sorenson Communications, Inc., CG Docket 03-123, CG Docket 10-51 (May 14, 2010).

<sup>41</sup> See, *In the Matter of Structure and Practices of the Video Relay Service Program*, CSDVRS Reply Comments to Sorenson Communications, CG Docket 10-51 (May 21, 2010); CSDVRS Letter to Joel Gurin (June 27, 2010).

<sup>42</sup> See, Sorenson Comments at p. 30 and FN 72.

in the marketplace. This contention that economies of scale do not exist in the VRS market (or are minor components of the industry) has been refuted and rebuffed repeatedly since 2007 when the tiered rate was first implemented.

Sorenson next raises five points in its attempt to refute economic reality by tying the tiered system to “dysfunctional behavior” in the VRS marketplace.<sup>43</sup> CSDVRS responds to these five points in kind as follows:

- *Tiers allow small and inefficient firms to remain in business.* CSDVRS agrees with this point, but opposes Sorenson’s contention that this is “dysfunctional.” To the contrary, this is how competition is fostered and grows. The tiered rate allows smaller (or as Sorenson labels them “inefficient”) firms to start up and/or remain in business and try to compete with larger providers and achieve an economy of scale to be a contender in the marketplace. Competition is a staple of capitalistic enterprise, and CSDVRS fully condones competition in all ethical forms. Contrarily, Sorenson is asserting that small firms should be run out of business (and all of its competition destroyed) by seeking an elimination of the payment structure that has promoted growth and competition for the past three years.

- *Tiers give smaller firms an incentive to stay small.* Sorenson opines that smaller VRS providers are incented to remain small to be eligible for a “hidden subsidy” provided in lower tiers. CSDVRS submits that this contention is patently absurd, particularly since lower volume costs consume the better portion of bottom tier rates for the smaller providers that have not achieved an economy of scale. If all providers were able to offer video relay service for \$3.19 per minute, as Sorenson is able to do, then this argument may have some merit. That notwithstanding, however, CSDVRS believes that the majority of VRS providers are not motivated solely by profit and

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<sup>43</sup> See, Sorenson Comments at p. 31

therefore do not share in Sorenson's apparent sentiment. Indeed, CSDVRS believes that all of the "inefficient" smaller providers would much rather see their volume rise into the next tier and be paid at a lower rate if it meant achieving greater market penetration in order to offer improved telecommunications access and services for deaf and hard-of-hearing people. CSDVRS submits that exorbitant profit margins and unreasonable returns simply do not figure into the business ethics of reputable VRS companies and that there is, and never has been, an incentive for any provider to "stay small" to reap a "hidden subsidy."

- *Tiers impose the inefficiencies of smaller firms on the subsidizing ratepayer.* This statement returns to the root of Sorenson's core contention that smaller providers are inefficient and should not be reimbursed for their higher costs in the form of a tiered payment plan. The Commission recognized in the 2007 Rate Order that the costs of lower volume providers will invariably be higher, and those costs were considered in the rate setting. Thus, low volume provider costs are scarcely an "imposition" on the ratepayers, as Sorenson contends. Indeed, the Fund has reached its current size based on the flat contributions of ratepayers over the years and there exists no imposition or subsidization based on perceived "inefficiencies" of smaller providers.

- *Tiers remove a small firm's incentive to undertake risky efforts to compete.* CSDVRS finds this statement to be vague, unsubstantiated, and nonsensical. Sorenson has made no intimations as to why the tiered payment structure stifles a smaller provider's attempt to grow and compete (through risky ventures or otherwise). In fact, CSDVRS submits that the very opposite holds true: the tiered structure offers an absolute incentive for smaller providers to undertake "risky efforts" to compete, be they technological innovations, marketing efforts, or expansion of interpreting pools, as an attempt to achieve an economy of scale (or become more "efficient"), gather up more market share, and become a marketplace competitor. A flat single rate on the other hand (which Sorenson has and would otherwise propose) would do exactly that opposite.



● *Periodic adjustment of tiers deter productivity gains and punish successful providers.* In its final point, Sorenson asserts that providers will not have an incentive to increase their productivity if the tiered rate structure is maintained with its [periodic] annual downward adjustment. However, Sorenson has itself proffered a periodic reduction in rate as a necessity, even as it advocates for a single tier flat rate.<sup>44</sup> Indeed, the annual rate adjustment has been a staple of the tiered rate since its inception. Thus the contrary position in the Sorenson Comments is rather enigmatic. Clearly the downward adjustments have not, in the past three years, deterred any provider from becoming more productive, nor have they served to punish any provider that would be so blatantly arrogant as to presume it has developed some genus of “superior business acumen.”

Ultimately, as CSDVRS has demonstrated to the Commission in prior filings, the tiered rate has served the industry quite well since its inception. It has allowed for sustained development and innovation of technology, healthy competition amongst a bevy of VRS providers, and overall improved access and functionality for deaf and hard-of-hearing persons. These are paramount issues to the functional equivalency mandate, and the Commission must not allow them to be undermined based on the financial will and/or political pressures of the dominant provider. CSDVRS has presented its opinion as to Sorenson’s motives in prior filings and would again reiterate that Sorenson’s derision of the tiered rate structure, the same one that allowed it to become the dominant provider in the VRS industry while reaping exorbitant profits from the Fund, is only demonstrative of its apparent unquenchable thirst for more wealth and monopolistic dominance of the marketplace, even if doing so would be to the detriment of consumers.

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<sup>44</sup> See, e.g., *In the Matter of Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities/Structure and Practices of the Video Relay Service Program*, Comments of Sorenson Communications, Inc., CG Docket 03-123, CG Docket 10-51 (May 14, 2010).

That Sorenson would repeatedly suggest that “there is no sound economic or legal justification for tiers”<sup>45</sup> is laughable. Indeed, the Commission’s denial of Sorenson’s stay, as affirmed by the 10<sup>th</sup> Circuit Court of Appeals, clearly delineated the legal justifications for the tiered rate structure. CSDVRS submits that the economic justification for a tiered rate is simple: to maintain a healthy and competitive VRS environment committed to bettering the lives of deaf and hard-of-hearing people. Surely Sorenson, with its array of economists and lawyers, should be able to appreciate and understand this extremely simple maxim. Moreover, with its army of professionals behind its various commentaries and proceedings before the Commission, Sorenson surely cannot be so ignorant as to think that a single-tier rate below \$6.00 per minute (or a reverse auction for that matter) would not force its competition out of business. CSDVRS submits, however, that Sorenson knows exactly what a single rate would mean: elimination of its competition, continued overcompensation from the Fund, and the ultimate ability to impose its will on the entire industry and the deaf and hard-of-hearing consumer base. CSDVRS believes Sorenson is either feigning ignorance, demonstrating willful ignorance, or choosing selective acceptance of economic realities in order to force the FCC’s hand to modify the VRS compensation methodology solely in Sorenson’s favor. Again, CSDVRS submits that the Commission should distance itself from Sorenson’s ostensible monopolistic aspirations, and thereby prevent entanglement in extensive antitrust litigation that would inevitably be born out of a bad policy decision in this regard.

## **CONCLUSION**

CSDVRS would implore the Commission to carefully consider its course of action in the upcoming rulemaking proceeding. As alliterated herein, a reverse auction/competitive bidding proceeding and/or an abandonment of the tiered rate structure will only serve to undo many of the significant accomplishments in video relay services in the past three years and entirely solidify the

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<sup>45</sup> See, Sorenson Comments p. 32

dominant provider's stranglehold on the industry. The tiered rate has fostered healthy competition, growth, and innovation which, but for the tiered rate, simply would not have occurred. It also bears mentioning that some of the larger VRS providers were able to get a foothold in the market and offer real competition to the dominant provider specifically because of the tiered rate structure.

CSDVRS can appreciate that the Commission has a difficult task on its hands, and lauds its efforts to repair those broken components of VRS as well as its continued support of the industry. CSDVRS is certainly aware that various players are likely trying to bring pressure to bear on the Commission, but CSDVRS would implore the FCC to rebuke any provider that would elevate pecuniary self-interest over the needs of deaf and hard-of-hearing people. CSDVRS believes that maintaining a multi-tiered reimbursement schedule and rejecting a competitive bidding or reverse auction system will allow for fair and equitable payment to providers of all sizes and will permit the industry to flourish, compete, and innovate for the betterment of those that it serves.

Respectfully Submitted,

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